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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Redevelopment of Spectrum to) ET Docket No.92-9
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

To: The Commission

COMMENTS OF R&D CELLULAR, INC.

R&D Cellular, Inc. ("R&D"), by counsel, submits these comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.^{1/}

I. Background

In its Notice, the Commission proposed to make available for emerging telecommunication technologies spectrum currently allocated for fixed microwave operation in the 1850-1990, 2110-2130/2160-2180, and 2130-2150/2180-2200 MHz. The Commission's goal was to ensure the availability of existing vacant 2 GHz spectrum in these bands for the development of new services and to discourage possible speculative fixed service applications for this spectrum.^{2/} Accordingly, the Commission announced that applications for new fixed microwave facilities submitted after

^{1/} Notice of Proposed Rulemaking in ET Docket No. 92-9, 7 FCC Rcd. 1542 (1992).

^{2/} See also the Commission's Public Notice of May 14, 1992, Mimeo 23115, entitled 2 Gigahertz Fixed Microwave Licensing Policy ("Public Notice").

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the adoption of the Notice would be granted only on a secondary basis.

The Commission initially proposed to implement its new rules by applying conditional secondary status to all major modifications, existing 2 GHz authorizations or licenses.^{3/} Subsequently, as enunciated in its Public Notice, the Commission determined that most major modifications would not significantly affect the use and availability of 2 GHz spectrum, and it therefore determined not to apply secondary status to most major modifications.^{4/} The Commission also determined that secondary status would not be applied "in certain situations" where additional links were required to complete a communications network, or where new facilities would be connected to a system licensed prior to January 16, 1992. In such instances, however, the Commission has stated that secondary status will not be applied "when the applicant makes a valid showing of its need for the facilities". Public Notice, at 2.

II. R&D's Interest and Request for Modification of Secondary Status Proposal

R&D is a cellular licensee in the Mississippi 2 - Benton Rural Service Area. Like almost all other cellular licensees, R&D uses microwave links to connect its cells, and many of these

^{3/} Such action was viewed as being consistent with Section 21.27 of the Commission's rules, 47 C.F.R. § 21.27.

^{4/} The specific types of major modifications where secondary status would not be applied were set forth in the Public Notice.

links are in the 2 GHz band. The cellular facilities that R&D operates were authorized well before the January 16, 1992 adoption date of the Notice.

R&D submits that equity dictates that licensees of systems authorized before January 16 be eligible for primary status, and that there are no corresponding public interest costs to providing such status.

R&D currently operates a multi-cell system, but is presently in the process of significantly expanding that system in order to provide high quality cellular service throughout its market area.^{5/} During the course of such expansion, R&D expects to be filing numerous additional applications in the future. In some instances, its applications will include the type of major modification to existing authorizations that the Commission specifically identified in its Public Notice as not being appropriate for secondary status. In other instances, R&D's microwave applications will involve additional links for "new" microwave stations, which links are needed to connect R&D's expanding cellular system. These applications fall within the category of applications where the Commission will convey secondary status unless the applicant "makes a valid showing of its need for the facilities".

^{5/} The Commission provides cellular carriers with up to five years to fully build out their systems. See Section 22.31(a)(1) of the rules. Thus, R&D's proposed continuing expansion is fully consistent with the Commission's rules.

R&D's expansion needs should all be exempt from secondary status, without the need for R&D to make any undefined special showing. Neither type of R&D's microwave filing appreciably impacts on spectrum availability for emerging technologies.^{6/} Moreover, neither type of system expansion would contribute to the abuses that the Commission sought to safeguard against by applying secondary status.

As noted above, the Commission's primary goal in establishing conditional a secondary status was to discourage speculative filings. As an existing Commission licensee, R&D applauds that strategy. Nevertheless, R&D submits that the Commission could safeguard against such abuse, and eliminate any opportunity for speculation, were the Commission to permit all existing Commission licensees to apply for 2 GHz facilities, and receive priority status on any resulting authorizations, so long as the microwave facilities would be utilized in conjunction with existing systems. The number of existing licenses who could utilize this exception is relatively small. In addition, it is most unlikely that any entity would become licensed for a communications system to be used in conjunction with 2 GHz facilities, solely in order to obtain a right to apply for them on a primary basis. Thus, there is no likelihood that

^{6/} It should also be noted that, for cellular carriers, there often is no effective substitute for 2 GHz facilities, whose costs and propagation characteristics serve cellular systems well.

speculation would increase from this change in the Commission's proposal.

In the event that the Commission is not inclined to revise its proposal as set forth herein, it should set forth with specificity the type of special showing needed to obtain primary status. Such further detail should expressly recognize the need to providers of mobile services utilizing multiple transmitting locations to utilize microwave links, and establish a presumption of entitlement to primary status.

WHEREFORE, it is respectfully requested that the Commission revise its proposal as set forth herein.

Respectfully submitted,

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